

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET 2020-242-E

IN RE:

Enrique McMilion, Jr.,	)	
Complainant/Petitioner,	)	
	)	
v.	)	DUKE ENERGY CAROLINAS, LLC's
	)	MOTION TO DISMISS
Duke Energy Carolinas, LLC,	)	
Defendant/Respondent.	)	
_____	)	

Duke Energy Carolinas, LLC (“DEC” or the “Company”) moves the Public Service Commission of South Carolina (“Commission”) to dismiss the above-captioned matter due to Complainant’s failure to prosecute. The Company also requests that the remaining filing deadlines for all parties and the hearing date be held in abeyance until this motion is resolved.

In support of its motion, DEC shows the following:

**BACKGROUND**

1. This is the fourth complaint related to Mr. McMilion’s aversion to smart meters filed since December 2018. The first three complaints were dismissed.<sup>1</sup> Despite being aware of the option to have a Manually Read Meter installed as provided for in the Commission-approved Manually Read Meter Rider, Mr. McMilion has failed to avail himself of that option.

2. In the first complaint proceeding, Docket No. 2018-379-E, Mr. McMilion was directed by Order No. 2019-95 to file direct testimony on or before February 15, 2019, and the

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<sup>1</sup> Order No. 2019-427, Docket No. 2018-379-E (June 12, 2019); Order No. 2019-686, Docket No. 2019-230-E (Sept. 25, 2019); and Order No. 2020-342, Docket No. 2019-331-E (June 30, 2020).

Company was given the option to file testimony on or before March 1, 2019. Mr. McMilion failed to file testimony, and the Company filed testimony on March 1, 2019 as directed. The Commission dismissed that complaint through Order No. 2019-427.

3. The Procedural Schedule established by the Clerk's Office in this case, and posted to the docket and served on the parties on October 22, 2020, directed Mr. McMilion to file and serve his direct testimony on or before December 8, 2020 and directed the Company to file and serve its direct testimony on or before December 22, 2020. That Procedural Schedule was affirmed by Commission Order No. 2020-794. Mr. McMilion did not file or serve any testimony, and the Company filed and served its testimony as directed.

### **MOTION TO DISMISS**

4. DEC requests that the Commission dismiss the Complaint due to Mr. McMilion's failure to prosecute his complaint. S.C.R.C.P. 41(b) permits the trial court to dismiss an action for failure of the plaintiff to prosecute his case or failure to comply with any order of the court. The Commission directed Mr. McMilion to file testimony on or before December 8, 2020, which he failed to do.

5. The General Assembly has previously found that, "in light of the importance of the Commission's functions, all proceedings before the Commission should be conducted in the most equitable, efficient and dignified manner." Act No. 440 of 1980. Further, the S.C. Supreme Court has found that courts have inherent power to dismiss an action for failure to prosecute. *See Small v. Mungo*, 254 S.C. 438, 442, 175 S.E.2d 802, 803 (1970); *Crestwood Golf Club, Inc. v. Potter*, 328 S.C. 201, 211–12, 493 S.E.2d 826, 832 (1997); 24 Am.Jur.2d Dismissal, Discontinuance, and Nonsuit 48 (1983) (stating that the power to dismiss an action for failure to prosecute derives from a court's inherent power to manage its own affairs "so as to achieve orderly and expeditious

disposition of cases”). The Company believes that the Commission has been empowered to do the same in this case.

6. Mr. McMilion’s repeated filings with the Commission related to his aversion to smart meters, and his rejection—evidently on principle—of the Commission-approved Manually Read Meter option, have caused considerable inefficiency for the Commission and for the Company. Over the four dockets initiated by Mr. McMilion, the Commission’s Clerk has docketed no fewer than 80 separate matters prepared primarily by the Commission, the Company, or Complainant. These cases—all dealing with Mr. McMilion’s aversion to smart meters—have resulted in significant legal expenses for the Company, which are borne by customers, and are taxing the Commission’s already busy dockets. All of this effort and expense has resulted in Mr. McMilion failing to file testimony necessary to prosecute his case, just as he did in the first complaint proceeding.

7. It is worth reminding the Commission that the use of a smart meter at Mr. McMilion’s premises is the product of his own choice. The Company has repeatedly offered the Manually Read Meter option to Mr. McMilion since it sent him notification of the option by letter on April 5, 2018, and—in the two and a half years since that time—Mr. McMilion has repeatedly declined to avail himself of that option. Mr. McMilion should not be permitted to continue to waste the Commission’s limited resources and force the Company to incur significant legal expenses that are borne by customers if he fails to avail himself of an available remedy in the Manually Read Meter Rider. “A party [allegedly] injured by the acts of another is required to do those things a person of ordinary prudence would do under the circumstances . . . .” *Baril v. Aiken Reg’l Med. Ctrs.*, 352 S.C. 271, 285, 573 S.E.2d 830, 838 (Ct. App. 2002).

### **CONCLUSION**

For the reasons stated above, the Company requests that the Commission dismiss this fourth Complaint filed by Mr. McMilion due to Complainant's failure to prosecute. The Company also requests that the remaining filing deadlines for all parties and the hearing date be held in abeyance until this motion is resolved.

Respectfully submitted this 22<sup>nd</sup> day of December, 2020.

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